SUPREME COURT OF THE UNITED STATES.

No. 396.

HUGH CARNEY, PLAINTIFF IN ERROR,

VS.

THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

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1 Pleas and proceedings before the Hon. John H. Gray, judge of the 5th judicial district of Iowa, at a term of the district court of Polk county, Iowa, begun and held at Des Moines on the 11th day of July, A. D. 1864.

THE STATE OF IOWA
vs.
HUGH CARNEY. } Criminal.

Be it remembered, that heretofore, to wit, on the 5th day of February, A. D. 1864, being the 11th day of the January term of the district court, the grand jury of said Polk county returned into court an indictment in words and figures following, to wit:

Indictment for keeping a nuisance.

In the district court of Polk county, in the State of Iowa.

THE STATE OF IOWA
against
HUGH CARNEY.

The grand jurors of the county of Polk, in the State of Iowa, being duly and legally empannelled, sworn, and charged in the name and by the authority of the State of Iowa, do accuse Hugh Carney of the crime of keeping a common nuisance, committed as follows:

That the said Hugh Carney on the first day of July, in the year of our Lord one thousand eight hundred and sixty-three, and
2 on divers other days and times between that day and the finding of this indictment, in the township of Washington, in the county of Polk, and the State of Iowa, did keep and use a certain building, situated in the township of Washington, in the county of Polk, and State of Iowa, for the purpose of keeping in said building intoxicating liquors to sell, in violation of law, and in the said building so kept and used as aforesaid the said Hugh Carney, on the said first day of July, in the year of our Lord one thousand eight hundred and sixty-three, and on the said divers and other days and times unlawfully did own and keep, and was engaged and concerned in keeping, intoxicating liquors, with intent then and there to sell said intoxicating liquors in violation of law, to the great damage and common nuisance of all the good people of the State of Iowa, contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Iowa.

B. F. MURRAY,
District Attorney of the 5th Judicial District.

The within indictment was presented in open court by the foreman of the grand jury, in the presence of the whole of the grand
3 jury, and filed by the clerk of the court, on this 5th day of February, A. D. 1864.

J. M. LAIRD,
Clerk of the District Court of Polk County, Iowa.

I hereby order a bench warrant to issue forthwith on the within indictment for the arrest of the therein named defendant, and his bail is hereby placed and fixed at $100 dollars.

J. H. GRAY,
Judge of the 5th Judicial District.

Indorsed: A true bill.

R. T. CHRISTY,
Foreman of the Grand Jury.

And afterwards, to wit, on the 19th day of February, being the 23d day of said January term, 1864, the following was entered of record, to wit:

STATE OF IOWA
vs. } No. 88. Criminal.
HUGH CARNEY.

This cause is continued for arrest of defendant.

And afterwards, to wit, on the 18th day of July, 1864, being the 7th day of said July term of the district court, the following was entered of record, to wit:

STATE OF IOWA
vs. } No. 88. Criminal.
HUGH CARNEY.

4 Now come Finch & Ellwood, attorneys for defendant, and file motion to set aside the indictment, which is overruled by the court, to the ruling of which the defendant excepts; which motion to set aside indictment is in words and figures following, to wit:

THE STATE OF IOWA
vs. } No. 88. Criminal.
HUGH CARNEY.

Now comes the defendant, and moves this court to set aside the indictment against him on the following grounds:

First. The grand jury which found the bill of indictment herein were not selected, drawn, summoned, impannelled, and sworn as prescribed by law.

Second. The clerk did not apportion the number of jurors to be selected from each township, as provided and required by sec. 2,275 of the revision.

Third. The notice required to be delivered to one of the judges of election in the several townships of the county by the sheriff, as required by sec. 2,726 of the revision.

Fourth. The judges of the election in the several townships did not select and make return to the county judge of a list of the names selected to serve as grand jurors in their respective townships, as required by sec. 2,727 of the revision; nor did the county can-
5 vassers at the meeting to canvass the votes polled in the county make such lists for the delinquent townships.

Fifth. The grand jury that found the bill were not selected at the time and in the manner provided by sec. 2,729 of the revision.

FINCH & ELLWOOD *for Motion.*

And afterwards, to wit, on the 8th day of said July term, 1864, the following was entered of record, to wit:

STATE OF IOWA
vs. } No. 88. Criminal.
HUGH CARNEY.

Now comes Finch & Ellwood, att'ys for defendant, and file motion to set aside the panel of petit jury, which is overruled by the court, to the ruling of which defendant excepts; which motion to set aside panel is in the words and figures following, to wit:

Challenge to the panel.

In the district court of Polk co., Iowa, July term, 1864.

STATE OF IOWA
vs.
HUGH CARNEY.

Now comes the defendant and challenges the panel of petit jurors impanelled to try the issues of this term of court, and moves to set aside the said panel, for the following reasons and upon the following grounds:

First. The jurors composing said panel were not relected, drawn, or summoned in the manner prescribed by the laws of this State.

6 Second. The clerk in selecting said jury did not apportion the number to be selected from the different townships of the county, as provided and required by sec. 2,725 of the revision. Nor deliver a statement thereof to the sheriff, as by said section required.

Third. The sheriff of the county did not cause the written notice to be delivered to one of the judges of election in the several townships imforming them of the number of jurors appointed to their respective townships, as required by sec. 2,726 of the revision.

Fourth. The judges of election in the different townships of the county did not make the selection and return list of names to the county judge, with the returns of election, as required by sec. 2,727 of the revision; nor on their failure to make and return such list did the county canvassers, at the meeting to canvass the votes polled in said county, make such list as provided by said sec. 2,727.

Fifth. The said jurors composing said panel were not drawn and summoned as provided and requi ed by sections 2,730-'31-'32-'33 and '34 of the revision.

Sixth. None of the material requisites prescribed by chapter 115 of the revision of 1860, for the selecting, drawing, and summoning of the said jurors, were observed or regarded in the selection, drawing, summoning, and return of said jurors.

FINCH & ELLWOOD,
For Deft.

7 And afterwards, on the 9th day of said July term, 1864, the following was entered of record, to wit:

THE STATE OF IOWA
vs.
HUGH CARNEY. } No. 88. Criminal.

On this 9th day of this term, this cause coming on for trial, a jury was duly called, accepted, and sworn, to whom the cause was duly submitted upon proofs and instructions, who retired and thereafter returned into court with a verdict of "guilty as charged," and thereupon defendant moved for arrest of judgment and for a new trial, and waived all objections to the form of or defects in above entry in this cause, which motion was overruled, to which defendant excepts, and thereupon the court fixed the 12th day of this term for judgment herein.

Which motion in arrest and for a new trial was in words and figures following, to wit:

District court, Polk county, July term, 1864.

STATE OF IOWA
vs.
HUGH CARNEY.

Now comes defendant and moves the court in arrest of judgment, and for a new trial herein upon the following grounds:

First. The court erred in overruling the motion of defendant
8 to set aside the indictment against him.

Second. The court erred in overruling and deciding against the defendant his challenge to the petit or trial jurors and disallowing the same.

Third. The court erred in refusing to give to the jury the instructions asked by the defendant touching the unconstitutionality of the law under which defendant is indicted and tried.

Fourth. The law under which defendant is indicted and convicted is at variance and in conflict with the Constitution of the United States or several provisions thereof.

Fifth. The State law under which defendant herein is indicted and convicted being in conflict with the provisions of the Constitution of the United States and the laws thereof is void.

Sixth. The State law prohibiting the sale of intoxicating liquors, and declaring such liquors a nuisance, the defendant holding a license to sell the same from the government of the United States, is in conflict with the Constitution and laws of the United States authorizing the importation and sale of liquors, and therefore void.

Seventh. The State law prohibiting the sale of intoxicating liquors and declaring the same a nuisance, and authorizing its destruction is in conflict sec. 2, art. 4, of the Constitution of the United
9 States, and in conflict with the second clause or paragraph of art. 6 of the Constitution of the United States, and in conflict

with that part of art. 5, amendments to the Constitution, contained in the two last paragraphs of said article; and in conflict with the provisions of the Constitution and laws of the United States, which recognize intoxicating liquors as property, and authorize the importation and sale thereof.

Eighth. The "act for the suppression of intemperance" passed by the legislature of this State, and under which the indictment herein was found, so far as it declares liquors kept with intent to sell the same, a nuisance, and authorize the seizure and destruction thereof, whether domestic or imported liquors, is void, being in conflict with the provisions of the Constitution of the United States and the laws thereof which authorize the importation and sale of intoxicating liquors, and grant licenses for the sale thereof; and also being in conflict with that portion art. 5, amendments to the Constitution of the United States which prohibits the taking of private property for public use without just compensation.

Ninth. There is no sufficient evidence to authorize or sustain the verdict of the jury.

FINCH & ELLWOOD,
Att'ys for Deft.

10 And afterwards, to wit, on the 28th day of said July term, 1864, the following was entered of record, to wit:

THE STATE OF IOWA
vs.
HUGH CARNEY. } No. 88. Criminal.

In this cause the defendant, Hugh Carney, is fined $10 *dollars* and costs of suit.

It is therefore ordered and adjudged, by the court, that the defendant, Hugh Carney, pay the above fine of $10 *dollars* and the costs, taxed at $, and in default thereof stands committed to jail of Polk county, according to law.

And on the same (28th) day of the July term, 1864, the following was entered of record, to wit:

THE STATE OF IOWA
vs.
HUGH CARNEY. } No. 88. Criminal.

Now come Finch & Ellwood, atty's for defendant, and file bill of exceptions, which bill of exceptions is in the words and figures following, to wit:

District court, July term, 1864.

THE STATE OF IOWA
vs.
HUGH CARNEY. }

11 Be it remembered that at this term of this court, and on the day of July, 1864, the defendant moved the court to

set aside the indictment against him herein, which said motion of the defendant is in words and figures following, to wit:

District court.

THE STATE OF IOWA
vs.
HUGH CARNEY.

Now comes the defendant and moves the court to set aside the indictment against him, on the following grounds:

First. The grand jury which found the bill of indictment herein were not selected, drawn, summoned, impanelled, or sworn as presented by law.

Second. The clerk did not apportion the number of jurors to be drown from each township, as provided and required by sec. 2,275 of the revision.

Third. The notice required to be delivered to one of the judges of election in the several townships of the county, by the sheriff, as required by sec. 2,726 of the revision.

Fourth. The judges of election of the several townships did not select and make return to the county judge a list of names to serve as grand jurors in their respective townships, as required by sec. 2,727 of the revision, nor did the county canvassers, at the meeting to canvass the votes polled in the county, make such list for the delinquent townships.

Fifth. The grand jury that found the bill were not selected at the time and in the manner provided by sec. 2,729 of the revision.

FINCH & ELLWOOD,
For Motion.

That upon the hearing of said motion by the by consent of the parties, Jacob M. Laird was called as a witness, and testified as follows:

I am the clerk of the district court of Polk county, Iowa, and was such clerk during the years 1862 and 1863. As such clerk, I appointed the number of jurors, grand and petit to be selected from the several townships in said county of Polk, as required by sec. 2,725 of the revision, for the years 1863 and 1864. That the grand jurors to serve for said county of Polk for one year after the last day of January, 1863, were apportioned by me in the fall of 1862, but I am unable to say whether they were so apportioned before or after the first Monday of September of that year. I did not deliver to the sheriff of Polk county a statement of such apportionment. I wrote on a slip of paper, and attached the same to the inside of the front cover of the poll books sent to the respective townships a direction in substance as follows: "The trustees of township will please send with the poll books the names of persons to serve as petit and as grand jurors for the year 1863.

"J. M. LAIRD,
Clerk Polk Co."

And the witness further testified:

The books provided for each township contained such a direction as that above given, and the directions intended for each township were filled up with the name of the township for which it was intended, and with the number of grand and the number of petit jurors to be selected from such township. That the poll books for some of the townships containing such directions were delivered by me to the trustees; those for some of the townships I delivered to the sheriff of the county, and some to the township clerks of their respective towns. I can't say for how many nor for which townships I delivered the poll books to the trustees; nor for which townships or how many I delivered to the sheriff; nor for which townships or how many to the township clerks.

Some of the poll books returned by the township trustees do not contain the above-written directions to the trustees of the township to select jurors.

The books returned from Allen, Elkhart, Four-Mile, Frank-
14 lin, and Saylor townships do not contain such directions. The absence of such written direction in said poll books I account for it in this way: I delivered to the trustee, or sheriff, or clerks of townships, poll books as above stated, and also duplicate poll books for the several townships with the directions to select jurors as aforesaid, written in one of the books sent to each township, and not in the duplicates; and I suppose the township trustees for the said towns must have retained the copy of poll book containing such directions, and returned the duplicates, which do not contain them.

And from the further testimony and evidence of said Laird, and the poll books of the different townships of the county, by the consent of the State introduced and received as evidence, the following facts appeared and were proved:

First. That the poll books returned by the township trustees in the year 1862, from Douglas, Franklin, Elkhart, and Saylor townships in said county, do not show that any grand jurors were selected by the judges of election in said townships, or either of them, to serve as jurors from the last day of January, 1864. That upon a blank leaf of the poll book of Four-Mile township, and upon which nothing else was written out, the names of three persons to be grand jurors from said township, and six persons to be petit jurors; but it in no
15 way appeared that the said names were written in said book by said trustees, or by their direction or authority. That the said list of names was not certified by the judges of election from said township to be the lists of jurors selected by them, nor did it appear that said names were in the handwriting of said judges, or either of them, or that the persons named resided in said township.

Second. That pasted on the inside of the front cover of the poll book, returned by the trustees of Allen township, was a paper, upon which the following entry appeared:

For grand jurors:
Jacob Krysher.
W. A. Drake.
Eli Overton.
For petit jurors:
Geo. Krysher.
E. James.
N. G. Wright.
D. Manbeck.
Paul Taylor.
Benj'n Ogden.

Don't forget this.

That this is the only return of said judges from said township, for the year specified, and the whole thereof; that the same is
16 in no way certified by the judges of election in and for said township, nor is it certified by them; nor does it appear to have been their handwriting, nor in there any evidence to show that said named persons were selected as jurors by said judges of election for said township, nor that the said entry on said slip of paper is in the handwriting of said judges, or of either of them; nor that the same was placed there by said judges or by their authority or direction, nor that the persons named were or are residents or inhabitants of said township of Allen.

Third. That the poll books for the said year, returned by the township trustees of the townships of Elkhart, Franklin, and Saylor, do not contain any lists of grand jurors for said townships, or either of them, nor does it appear from the records that the county canvassers of the votes polled at the election in 1862 selected jurors for such delinquent townships, or either of them; but it is claimed that the poll books from some or one of these townships, when returned, contained a loose slip of paper, with certain names upon them as jurors; that such lists of names on such slips contained no certificates of the judges of election of and from said townships; that the persons whose names were found on said lists were jurors selected by
17 them from said townships, nor did it appear that such lists were in the handwriting of such trustees, or that the lists were prepared by them or by their direction or authority, or that the persons named resided in said townships.

That the said motion to set aside the indictment was heard by the court on the evidence of said J. M. Laird, and upon the poll books showing the facts above recited, and that on the hearing of such motion the court overruled the same, and to such ruling and decision of the court defendant then and there excepted.

And be it further remembered that on the 19th day of July, 1864, and before the trial of this action commenced, this defendant filed his challenge to the trial jurors selected and impanelled to try this issue and the other issues of traverse at this term, which said challenge is in the words and figures following, to wit:

Challenge to panel.

District court of Polk county, Iowa, July term, 1864.

THE STATE OF IOWA
vs.
HUGH CARNEY.

Now comes the defendant and challenges the panel of petit jurors impanelled to try the issues of this term of the court, and moves to set aside the said panel for the following reasons and upon the following grounds:

18 First. The jurors composing said panel were not selected, drawn, or summoned in the manner prescribed by the laws of this State.

Second. The clerk, in selecting said jury, did not apportion the number to be selected from the different townships of the county, as provided and required by sec. 2,725 of the revision, nor deliver a statement thereof to the sheriff, as by said section required.

Third. The sheriff of the county did not cause a written notice to be delivered to one of the judges of election in the several townships, informing them of the number of jurors apportioned to their respective townships, as required by section 2,726 of the revision.

Fourth. The judges of election in the different townships of the county did not make the selections and return lists of names to the county judge, with the returns of election, as required by sec. 2,727 of the revision, nor, on their failure to make and return such lists, did the county canvassers, at the meeting to canvass the votes polled in said county, make such lists, as provided by said sec. 2,727.

Fifth. The said jurors composing said panel were not drawn and summoned as provided and required by 2,730, '31, '32, '33, and '34 of the revision.

19 Sixth. None of the material requisites prescribed by chap. 115 of the revision of 1860 for the selecting, drawing, and summoning of the said jurors were observed or regarded in the selection, drawing, summoning, and return of said jurors.

FINCH & ELLWOOD,
For Def't.

That upon the trial of such challenge to the panel of the trial jurors, the defendant called Jacob M. Laird, who testified as follows:

I am clerk of the district court of Polk county, Iowa, and was such clerk in the year 1863. I, as such clerk, apportioned the number of jurors, grand and petit, to be selected from each township in said county of Polk, as required and provided by sec. 2,725 of the revision for the year 1864. I cannot say that I made such apportionment before the first Monday in Sept. of that year. It may have been after that time. I did not deliver to the sheriff of Polk county a statement of such apportionment. After such apportionment, I wrote and attached to the inside of the front cover of the poll books

sent to the respective townships, a direction to the trustees in writing, in substance as follows:

"The trustees of township will send in, with
their poll books, the names of persons to serve
as grand, and as petit jurors, for the year 1864.
"J. M. LAIRD, *Clerk.*"

The book provided for each township contained such a direction as that above given, and the direction intended for each township for which it was intended, and the number of grand and the number of petit jurors to be selected from such township; that the poll books for some of the townships, containing the above and foregoing directions, were delivered by me to the trustees, some were delivered to the sheriff of the county, and some to the township clerks of their respective towns. I can't say how many I delivered to the trustees, nor how many to the sheriff, nor how many to the clerk of townships; nor can I designate what townships through their trustees received the poll books with such directions from me, nor for what townships I delivered the poll books to the sheriff, nor for what townships I delivered them to the township clerks.

Some of the poll books returned by the township trustees do not contain the above written directions to the trustees of the township to select jurors, and those I account for in this way: I delivered to the trustees, or sheriff, or clerks of the several townships duplicates of the poll books for the respective townships, with directions to select jurors written in only one of the poll books for the township, and suppose the trustees must have retained the poll book containing such directions, and returned the duplicate which does not contain them. The poll books returned by the trustees of Delaware, Des Moines, Beaver, Lee, and Four-Mile townships do not contain such written directions to the township trustees to select such jurors.

And from the further testimony and evidence of said Laird and the poll books of the different townships of the county introduced as evidence on the hearing and trial of such trial challenge, the following facts appeared and were proved:

First. That Delaware township, in said county, no grand or petit (trial) were selected by the judges of election of that township for the year 1864; that no lists of persons to serve either as grand or petit jurors for that year (1864) were returned by the judges of election of said Delaware township to the county judge, as provided and required by sec. 2,727 of the revision of 1860; and that the county canvassers at the meeting to canvass the votes polled in said county at the election held in 1863 did not make lists of the grand and petit jurors for said Delaware township to serve as jurors for the year 1864, as provided by said sec. 2,727, although said Delaware township was delinquent in the selection of jurors for the same, and that no petit, or trial, jurors were selected or returned from said township for the year 1864, and no persons from that township were in the trial jury.

Second. That the poll books from the townships of Allen, Beaver, Bloomfield, Des Moines, Four-Mile, Franklin, Jefferson, Lee, Madison, Saylor, Valley, and Washington, in said county, for the year 1863, returned by the respective election judges of said townships to the county judge, the last leaf in said poll books upon which leaf nothing was written contained what purported to be lists of grand and petit jurors, but neither of such lists are certified by the judges of election of said townships respectively or by any other person to be the list of jurors selected by the election judges of said townships; nor is there any certificate of the judges of election of said townships that the names contained in said lists are the names of persons selected by such judges to serve as jurors for these townships respectively; nor is there any evidence that the names so purporting be the names of grand and petit jurors were written
23 or placed on the last leaf of said poll books, as aforesaid, by the judges of election of the said respective townships, or by their authority or direction; nor is there any certificate or evidence to show that the said persons named in such lists resided in said townships, or were inhabitants thereof.

Third. That the poll books of the election of 1863, returned by the judges of election in Douglas township, in said county, did not in any way contain any lists of jurors for said township for the year 1864, either on the last leaf or elsewhere; that in the poll books of said township there was found a slip of paper on which was indorsed names for grand and petit jurors, but said slip was in no way certified by the judges of the election of that township; nor was there any certificate of the said township trustees upon or appended to said slip, or of any person whatever certifying or indicating that the names on such slip were the names of persons selected to serve as such jurors, nor any certificate or evidence that the same was prepared by the said township trustees of said township, or by their direction, or that the persons therein named were selected by the judges of election to serve as jurors, or that the persons therein named resided in said township of Douglas; nor that the handwriting of the trustees of said township, or that the same was prepared or placed in said book by their authority or direction, but such
24 names on said slip were by the clerk adopted and included as jurors, grand and petit, from said township for the year 1864.

That said challenge to the panel of trial jurors was heard by the court upon the evidence of J. M. Laird, above set forth, and upon the poll books of the respective townships, showing the facts as above set forth, that upon the trial of such challenge the facts of the challenge above shown were not allowed by the court as a sufficient ground of challenge to said panel of trial jurors, and the court overruled said challenge, and directed the jury to be impanelled, and the jury were accordingly impanelled to try this action.

That to the decision of the court disallowing and overruling said challenge to the trial jurors, and directing the said jury to be impanelled, this defendant then and there excepted.

And be it further remembered that on the trial of this action Burbin Wise was called as a witness, who being duly sworn testified: I live in Peoria city, Polk county, Iowa; I have bought and paid for whiskey of Hugh Carney, in Washington township, Polk co.; I only bought twice in last year.

25 Samuel Allen was called as a witness, who being sworn, testified: I live in Elkhart township, Polk co., Iowa; I have bought whiskey of Hugh Carney two or three times within last year, on Skunk Bottom, Washington township, Polk co., Iowa.

James Allen was then called as a witness, who being sworn, testified: I have bought of Hugh Carney several times within the last year whiskey; keeps on Skunk Bottom, Washington township, Polk co., Iowa; I live in the same township.

That the State here rested the plaintiff's case, and the defendant offered in evidence a license from the government of the United States to sell intoxicating liquors at retail in the said county of Polk, of which license the following is a copy, to wit:

License granted July 1*st*, 1863, *expires May* 1*st*, 1864.

No. .

To all whom it may concern:

This license is granted to Hugh Carney, of Washington township, in the county of Polk and State of Iowa, to carry on the business or occupation of retail liquor dealer, at No. street, in the aforementioned county and State, he having paid the tax of sixteen and 67-100 dollars therefor, conformable to the provisions of an act en-

26 titled "An act to provide internal revenue to support the government and to pay interest on the public debt," approved July 1st, 1862. This license to be in force until the first day of May, 1864, provided the said Hugh Carney shall conform to the requirements of said act and of such other act or acts as are now or may hereafter be in this behalf enacted.

Given under my hand and seal, at Council Bluffs, this 17th day of September, A. D. 1863.

HORACE EVERETT,
Per A. NEWTON,
Dept. Collector of the 5th Collection District in the State of Iowa.

That the district attorney, on behalf of the State, then admitted that portions of the liquors had and held and kept by the defendant at the times of the several alleged sales mentioned by the witnesses, Burbin Wise, Samuel Allen, and James Allen, and during the entire time mentioned by said witnesses, and charged by the indictment herein, were imported liquors, upon the importation of which duties were paid to the government of the United States under the laws thereof, and such admission was given to and received by the jury as evidence. That the foregoing evidence of Burbin Wise,

27 Samuel Allen, and James Allen, and the license from the gov-

ernment of the United States, (a copy of which is above set forth,) and the said admission of the district attorney, above given and set forth, is all the evidence and proof given to the jury on the trial of this action.

And be it remembered that, on submitting this action to the jury, the defendant asked the court to charge the jury as follows:

First. That the laws of the State of Iowa declaring intoxicating liquors and the sale thereof a nuisance, and prohibiting the sale thereof, being the same under which the indictment herein was found, is in conflict with the provisions of the Constitution of the United States, and therefore void.

Second. That the Constitution and laws of the United States authorizing the importation and sale of intoxicating liquors, and the granting of licenses for the sale thereof, the law of this State under which this indictment is found is in conflict with the provisions of art. 4, sec. 2 of the Constitution of the United States, and also with the provisions of article six of said instrument, and to the second clause or paragraph thereof.

Third. That the act for the suppression of intemperance,
28 passed by the legislature of this State, and under which the indictment herein was found, so far as it declares liquors kept with intent to sell the same a nuisance, and authorizes the seizure and destruction of thereof, whether domestic or imported liquors, is void, being in conflict with the provisions of the Constitution of the United States and the laws thereof, which authorize the importation and sale of intoxicating liquors, and grant licenses for the sale thereof, and also being in conflict with that portion of article 5, amendments to the Constitution of the United States, which prohibits the taking of private property for public use without just compensation.

That the court declined or refused to give to the jury the said instructions asked by defendant, or either or any of them, and to such refusal of the court to give said instructions, and each and every of them, the defendant then and there excepted.

And be it further remembered, that after verdict and before judgment, and at this same July term, 1864, the said defendant filed his motion in arrest of judgment and for a new trial in this action, in the words and figures following, to wit:

District court, Polk county.—July term, 1864.

THE STATE OF IOWA
vs.
HUGH CARNEY.

29 Now comes the defendant, and moves the court in arrest of judgment and for a new trial herein, upon the following grounds:

First. The court erred in overruling the motion of defendant to set aside the indictment against him.

Second. The court erred in overruling and deciding against the defendant his challenge to the panel of trial jurors, and disallowing the same.

Third. The court in refusing to give to the jury the instructions asked by the defendant touching the unconstitutionality of the law under which the defendant is indicted and tried.

Fourth. The law under which defendant is indicted and convicted is at variance and in conflict with the Constitution of the United States, or several provisions thereof.

Fifth. The State law under which defendant herein is indicted and convicted, being in conflict with the provisions of the Constitution of the United States and the laws thereof, is void.

Sixth. The State law prohibiting the sale of intoxicating liquors, and declaring such liquors a nuisance, the defendant holding a license for the sale of the same from the government of the United States, is in conflict with the Constitution and laws of the United States
30 authorizing the importation and sale of liquors, and therefore void.

Seventh. The State law prohibiting the sale of intoxicating liquors and declaring the same a nuisance, and authorizing its destruction, is in conflict with sec. 2, art. 4 of the Constitution of the United States, and in conflict with the second clause or paragraph of art. 6 of the Constitution of the United States, and in conflict with that part of art. 5, amendments to the Constitution, contained in the two last paragraphs of said article, and in conflict with the provisions of the Constitution and laws of the United States, which recognize intoxicating liquors as property, and authorizes the importation and sale thereof.

Eighth. The "act for the suppression of intemperance," passed by the legislature of this State, and under which the indictment herein was found, so far as it declares liquors kept with intent to sell the same a nuisance; and authorizes the seizure and destruction thereof, whether domestic or imported liquors, is void, being in conflict with the provisions of the Constitution of the United States and the laws thereof, which authorize the importation and sale of intoxicating liquors, and grants licenses for the sale thereof, and also being in conflict with that portion of art. 5, amendments to the Con-
31 stitution of the United States, which prohibits the taking of private property for public use without just compensation.

Ninth. There is no sufficient evidence to authorize the verdict of the jury.

FINCH & ELLWOOD,
Att'ys for Def't.

That upon the hearing of said motion in arrest of judgment and for a new trial the court overruled said motion and denied a new trial, to which ruling of the court the defendant then and there excepted.

And inasmuch as the matters aforesaid do not appear of record herein, the defendant asks that the same be incorporated into his bill.

of exceptions, and made a part of the record herein, and it is so ordered by the court this 12th day of August, A. D. 1864, and the 28th day of said July term.

(Signed) J. H. GRAY, *Judge.*

All right.

S. SIBLEY.

32 And afterwards, to wit, on the 10th day of July, A. D. 1865, a notice of appeal was filed herein, in words and figures following, to wit:

Notice of appeal from the judgment of the district court to the supreme court.

In district court of Polk county, Iowa.

THE STATE OF IOWA
vs.
HUGH CARNEY.

To the district attorney of the fifth judicial district, and the clerk of the district court of Polk county, Iowa:

You are hereby notified that the said defendant has appealed from the judgment of the district court of Polk county, Iowa, in the above-entitled cause, to the supreme court of the State of Iowa, and the clerk of the district court of Polk county will therefore certify to said supreme court for hearing at the next term thereof, copies of the indictment, pleas of the defendant, all motions in the case, the motion for a new trial, the bill of exceptions, and all the journal entries in the case.

J. M. ELLWOOD, and
FINCH, CLARK & RICE,
Att'ys for Def't.

33 We hereby accept due and legal service of the above notice on this 7th day of July, 1865.

H. W. MAXWELL,
District Attorney 5th Judicial District.
H. H. GRIFFITHS, *Clerk.*

STATE OF IOWA, *Polk County, ss:*

I, H. H. Griffiths, clerk of the district court of said county and State, hereby certify that the foregoing is a correct transcript of the indictment, all motions in the case, all journal entries, the bill of exceptions, and notice of appeal in the above-entitled cause, as full as the same appears on record and file in office at Des Moines.

Witness my hand and the seal of the court this 5th day of September, 1865.

[L. S.]

H. H. GRIFFITHS, *Clerk.*
By S. S. ETHERIDGE, *Deputy.*

U. S. rev. 5 cts.]

Fees for transcript	$9 75
Cert. and seal, and stamp	55
	10 30
Duplicate	10 30
	20 60

34 Be it remembered that at a term of the supreme court of Iowa, begun and held at the city of Des Moines, on Saturday, the 7th day of January, 1866, (being the December term 1866, of said court.)

Present: The Hon. Geo. G. Wright, chief justice; Hon. Halph P. Lowe, Hon. Jno. F. Dillon, Hon. C. C. Cole, judges.

The following was entered of record:

Appeal from Polk Co.

THE STATE OF IOWA
vs.
HUGH CARNEY, appl't.

Submitted on part of appellant.

And afterwards, to wit, on Thursday the 1st day of February, 1866, the following was entered of record, to wit:

Appeal from Polk Co.

THE STATE OF IOWA
against
HUGH CARNEY, appl't. } 2,308.

This day this cause coming on for hearing was submitted to the consideration of the court, and the court being now sufficiently advised in the premises, find that there is no error in the judgment of the court below and file their written opinion. It is therefore considered by the court that the judgment of the court below be
35 affirmed, and that the State of Iowa have and recover of and from the appellant, Hugh Carney, the sum of ten dollars as a fine, and the costs of the court below taxed at $, and the costs of this court taxed at $, and that execution issue therefor, and that the appellant, Hugh Carney, stand committed to the county jail of Polk county until said fine and costs are fully paid, and that a certified copy of this judgment shall be furnished the sheriff of Polk county by the clerk of this court, which shall be his sufficient warning to arrest and commit the said Hugh Carney to the county jail of Polk county and to stand so committed in accordance with this judgment, and the said Hugh Carney being three times called to respond to this judgment, comes not but makes default.

It is therefore ordered and adjudged that default be entered in favor of the State of Iowa, and against the said defendant, and the undertaking of the bail in this case is forfeited.

36 And afterwards, to wit, on the 6th day of February, 1866, the following was entered of record in said court, to wit:

Appeal from Polk Co.

THE STATE OF IOWA
against
HUGH CARNEY, appl't. } 2,308.

In this case it is ordered that the bond on writ of error to Supreme Court U. S., be in the penal sum of $300, with sureties to be approved by the clerk of this court.

37 THE STATE OF IOWA, *Supreme Court:*

I, Lewis Kinsey, clerk of the supreme court of Iowa, do hereby certify that the foregoing pages, from No. 34 to No. 36 inc., contains a full, true, and complete transcript of all the journal entries of the cause entitled The State of Iowa *vs.* Hugh Carney, in the supreme court of Iowa, as full, true, and complete as the same now appears of record in said court.

Witness, Lewis Kinsey, clerk of said court, and the seal thereof hereunto attached, at Des Moines, Iowa, this 15th day of November, A. D. 1866.

[L. S.] LEWIS KINSEY, *Clerk.*

5-ct. int. rev. stamp, cancelled.

38 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the supreme court of the State of Iowa, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said supreme court of the State of Iowa, before you, between the State of Iowa and Hugh Carney, manifest error hath happened to the great damage of the said Hugh Carney, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday in December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this sixth day of February, in the

year of our Lord one thousand eight hundred and sixty-six, and of the independence of the United States the 90th.

[SEAL.] W. G. WOODWARD,
Clerk of the United States Circuit Court
for the District of Iowa.
By J. BAUSMAN, *Dep'ty.*

39 The within writ of error allowed this sixth day of February, A. D. 1866.

R. P. LOWE,
Chief Justice of the Supreme Court of the State of Iowa.

Filed Feb'y 6, '66.

L. KINSEY, *Clk.*

40 Supreme court of the State of Iowa.

THE STATE OF IOWA
vs.
HUGH CARNEY.

I, the undersigned, chief justice of the supreme court of the State of Iowa, do hereby certify that in the above-entitled cause, and upon the hearing and decision thereof in this court, there was drawn in question the validity of the statute of the State of Iowa, entitled "An act for the suppression of intemperance," passed by the general assembly of said State, and which took effect July 1, 1855. And especially the validity of the 8th section of said act, on the ground that the said act, and especially the 8th section thereof, were repugnant to, and in conflict with, the Constitution and laws of the United States, and that the decision of the court was in favor of the validity of said statute and of the 8th section thereof.

And I do also further certify that in the above-entitled cause, and on the hearing and decision thereof in this court, there was drawn in question the validity of the right, privilege, and authority of the defendant, Hugh Carney, to sell intoxicating liquors, either imported or domestic, and to keep the same with intent to sell, under a license so to do, granted to him by the government of the United States pursuant to and in compliance with the provisions of
41 the act of Congress entitled "An act to provide internal revenue to support the government and to pay interest on the public debt," approved July 1, 1862, and the acts amendatory thereof, and that the decision of the court was against the validity of such right, privilege, or authority under such license.

And I further certify that the said supreme court of the State of Iowa have ordered this certificate to be made a part of the record in the above-entitled cause.

In witness whereof I have hereto set my hand and caused the seal of the supreme court of the said State to be affixed, at Des Moines, in said State, this 6th day of Feb'y, 1866.

[L. S.] R. P. LOWE,
Chief Justice of the Supreme Court of the State of Iowa.

42 UNITED STATES OF AMERICA:

To the State of Iowa, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the first Monday in December next, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Iowa, wherein Hugh Carney is plaintiff, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Ralph P. Lowe, chief justice of the supreme court of the State of Iowa, this sixth day of February, in the year of our Lord 1866.

R. P. LOWE,
Chief Justice of the Supreme Court of the State of Iowa.

43 *Citation.*

STATE OF IOWA, *Polk County.*

I, J. M. Walker, being duly sworn, depose and say that I am United States marshal for the district of Iowa; that the within citation came into my hands on the 27th day of October, 1844, and that I served the same by sending the same to W. M. Stone, governor of said State of Iowa, and by leaving with him a true copy of the same at Knoxville, Iowa, on the 29th day of the same month, and by reading the same and delivering a true copy thereof to F. E. Bissell, att'y gen'l of the said State, in Dubuque, said State, on the 1st day of Nov., 1844, and at the respective times of service did exhibit the original hereof to gov. and att'y gen'l.

J. M. WALKER,
U. S. Marshal of Iowa.

Subscribed and sworn to by J. M. Walker, before me, this 1st day of November, 1866.

[L. S.]

JOHN D. RIVERS,
Notary Public, Polk Co., Iowa.

Marshal's fees:

Mileage	$18 42
Service	4 00
	22 42

Filed Feb. 6, 1866.

L. KINSEY, *Clk S. C.*

44 State of Iowa, supreme court.

I, Lewis Kinsey, clerk of the supreme court of the State of Iowa, do hereby certify that the foregoing pages contain a full, true, and complete copy of the transcript in said cause of the State of Iowa *vs.* Hugh Carney, filed in this court, as full, true, and complete as the original now on file in my office. Also, that I have hereto attached the original writ of error to the said court, together with the certificate of the chief jnstice of said court.

In witness whereof I have hereunto set my hand and affixed the seal of said court. Done at the city of Des Moines, Iowa, this 25th day October, A. D. 1866.

[L. S.] LEWIS KINSEY, *Clerk.*

[5-c. in. rev. stamp, cancelled.]

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